Hudson (1883) 15 Fed. 162, should be interpreted in its light. The law of continental Europe, claiming jurisdiction only over causes relating to the sea, Zouch, Adm. 24-38, gives no support to the principal case. Where third parties are proceeded against the cause has always been such as is originally cognizable by a maritime court. *Navire "Gyptis"* (1887) 2 *Revue Inter. du Droit Mar. 664.*

It is not improbable, however, that the higher courts, influenced by equitable procedure, where third parties are frequently brought in, though originally not liable in equity, may affirm the decision. It is sometimes said that admiralty acts as a court of equity. This statement, however, is untrue, for an admiralty court has none of the essential characteristics of an equity court. *The Phoebus* (1837) 11 Pet. 175; *Grant* v. *Poillon* (1857) 20 How. 162. Even where jurisdiction is obtained, admiralty refuses to pass upon questions peculiarly within the Chancellor's jurisdiction, e. g., the reformation of a contract. *Myer* v. *Pac. Mail S. S. Co.* (1893) 58 Fed. 922. Admiralty recognizes principles similar to those of equity, e. g., the doctrine of unclean hands. *Am. Ins. Co.* v. *Johnson, supra.* The refusal to enforce stale liens is analogous to the theory of laches. *The Nebraska* (1895) 69 Fed. 1009. These conceptions, however, are inherent in the maritime law and were not extracted from equity jurisprudence. Benedict, Adm. § 329. Though from the standpoint of avoiding circuity of action and of saving expense to the original respondent, who otherwise must bring a new suit on his common law claim, the rule of the principal case might seem desirable, such equitable considerations should not be invoked to effect an extension of jurisdiction unknown to the maritime law, to the courts of England or the Colonies.

PERSONAL COMMUNICATIONS WITHIN SECTION 829 OF THE NEW YORK CODE.—Section 829 of the New York Code of Civil Procedure provides for the disqualification of an interested party from testifying against an executor, etc., concerning a personal communication or transaction with the decedent. In defining a personal transaction or communication, the Court of Appeals has not been consistent. The tendency of the earlier cases was to restrict the terms; an interested witness could testify to a conversation between the decedent and a third party in which he participated, provided his testimony was restricted to what passed between the other two parties to the transaction. *Cary* v. *White* (1874) 59 N. Y. 336. Soon after, a witness was disqualified from testifying to a conversation in which he was included in the slightest manner by word or gesture. *Bragne* v. *Lord* (1876) 67 N. Y. 495. Finally, any words uttered in the presence of a witness were held to be communications to him. *Matter of Eysamen* (1889) 113 N. Y. 62; *Matter of Dunham* (1890) 121 N. Y. 575; *Matter of Bernsee* (1894) 141 N. Y. 389. Yet recently, in the case of *Hutton* v. *Smith* (1903) 175 N. Y. 375, the Court of Appeals reverted to the test in *Bragne* v. *Lord.* This test is uncertain, and objectionable because of the difficulty in determining, before cross-examination, what part the witness played. There would seem to be only two definitions of a personal communication which afford a definite test: (1) a communication directly with the decedent in which the witness took an active, and not a merely passive part;

(2) any impression received through the senses directly from the decedent, which the decedent, were he alive, could contradict or explain. This latter test, though apparently extreme, is more in accordance with the spirit of the statute as interpreted by the New York courts. True, they have not applied it consistently. Thus it has been held that a witness may testify to having seen the decedent at a particular place. *In re Brown* (1891) 14 N. Y. Supp. 122; and see *Hier* v. *Grant* (1872) 47 N. Y. 278. If this case stands, the fine distinction must be drawn between the mere fact of seeing the decedent, and positive impressions of the decedent's conduct, condition, or acts; for it is well established that a witness who, from sight or hearing, has derived definite impressions of the decedent's physical or mental condition, may not testify to such impressions, *Holcomb* v. *Holcomb* (1884) 95 N. Y. 316, and testimony as to acts done by the decedent, even in ignorance of the witness's presence, is no more admissible than testimony as to words spoken by him. *Matter of Eysamen, supra; Holland* v. *Holland* (N. Y. 1904) 98 App. Div. 366. The chief confusion is in regard to conversations between the decedent and a third party overheard by the witness. It is to be regretted that the holding of the *Eysamen* case was not regarded as conclusive.

The courts have also been troubled in determining the extent to which a witness may testify concerning extraneous facts tending to prove a personal transaction. Aside from evidence introduced in rebuttal of an opposing witness, where different rules apply, see *Pinney* v. *Orth* (1882) 88 N. Y. 447; *Clift* v. *Moses* (1889) 112 N. Y. 426, two tests have apparently been laid down. (1) If the fact creates the natural inference of a personal transaction it is inadmissible. *Nay* v. *Curley* (1889) 113 N. Y. 575. The inference need not be a logically necessary one. Thus, evidence of the possession of an instrument is inadmissible as raising the inference of delivery. *Richardson* v. *Emmett* (1902) 170 N. Y. 412. Whether the inference of a personal transaction is the natural one to draw, depends, of course, on the circumstances of each case. See *Hoag* v. *Wright* (1903) 174 N. Y. 36. (2) If the sole relevancy of the fact sought to be proved lies in its tendency to disclose a personal transaction, it is inadmissible. *Parker* v. *Parsons* (N. Y. 1903) 79 App. Div. 310. Since the statute was not intended to preserve the old common-law disqualification of interested parties, but was meant to allow such parties to prove independent extraneous facts, the courts might well have required the application of both tests before refusing to admit, and in the majority of cases where the evidence is excluded, both tests are satisfied. Yet an analysis of the cases indicates that either alone may exclude. See *Parker* v. *Parsons, supra; Wadsworth* v. *Heermans* (1881) 85 N. Y. 639; *Adams* v. *Morrison* (1889) 113 N. Y. 152; *Lerche* v. *Brasher* (1887) 104 N. Y. 157.

In a case recently decided by the Appellate Division, it was held that the payee of a note made by the decedent could not show, as a qualification to identify the decedent's handwriting, that she had seen him write on various occasions. *Wilber* v. *Gillespie* (1908) 39 N. Y. Law Jour. No. 124. Proof of handwriting, no objection being made to the laying of the foundation, ought not to be excluded. *Hoag* v. *Wright, supra.* The genuineness of the signature is an extraneous fact, neither raising a natural inference of delivery, *Saratoga County Bank* v. *Leach* (N. Y. 1885) 37 Hun 336, nor relevant only

as tending to show delivery, since the authorship of the instrument is also in issue. It is submitted, however, that the case was correctly decided in view of the tendency of the holdings of the Court of Appeals. The objection was taken, not to the witness's proving the genuineness of the signature, but to the method by which she attempted to establish her knowledge of the decedent's handwriting. She was testifying to impressions of conduct derived from her observation of acts of the decedent, which he, if alive, could have denied. The case is clearly within the second test laid down at the beginning of this discussion, and is supported by the *Eysamen* case. The case of *Wing* v. *Bliss* (1889) 8 N. Y. Supp. 500, affd. on opinion below, (1893) 138 N. Y. 643, which is apparently contra, rests solely on the authority of *Simmons* v. *Havens* (1886) 101 N. Y. 427, which merely decided that the witness might testify as to the genuineness of the signature, no objection being made to the laying of the foundation. On the other hand it has been held that, where the existence of a partnership is in issue, an interested witness may not testify that he saw the decedent write the partnership name in a firm book. *Adams* v. *Morrison* (1889) 113 N. Y. 152. It may, however, be argued that only evidence concerning personal transactions relevant to the issue should be excluded, and not evidence introduced merely for the purpose of laying a foundation. This distinction is arbitrary, and finds no support in the language of the section. The case, while extreme, is to be supported.

PROPERTY IN A POWER.—How far an absolute and beneficial power confers upon the donee incidents of ownership in the property subject to appointment, is a question which has been unsatisfactorily answered. A judgment can only be satisfied, whether by legal or equitable execution, from the property of the debtor. At law, a power of appointment did not give the donee title to the property subject to the power, and, therefore, such property could not be reached by legal execution. Courts of equity, however, for a time considered a right of enjoyment coupled with an absolute power of beneficial appointment as equivalent to the absolute property. The donee of such a power was "owner in Equity." *Ashfield* v. *Ashfield* (1693) 2 Vern. 287. A century later, an estate subject to the appointment of an equitable life tenant was said to be "as absolutely hers as any other part of her property," and passed under the residuary clause of her will. *Standen* v. *Standen* (1795) 2 Ves. Jr. 589; and see *Bainton* v. *Ward* (1741) 2 Atk. 172. But this attitude was finally repudiated, and some fine lines were drawn between powers and property. *Bradley* v. *Westcott* (1807) 13 Ves. Sr. 445; *Barford* v. *Street* (1809) 16 Ves. Jr. 135. The distinction, however, was so firmly established that in *Ex parte Gilchrist* (1886) 17 Q. B. D. 512, Fry, L. J., was moved to say, "No two ideas can be more distinct the one from the other than those of 'property' and 'power.' A 'power' is an individual and personal capacity of the donee of the power to do something. That it may result in property becoming vested in him is immaterial, the general nature of the power does not make it property. * * * I am almost ashamed to deal with such an elementary proposition."

Yet, in certain cases, equity will assist a creditor. If the donee appoints by deed or will to a volunteer, the property, real and personal, becomes assets